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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057344
Party	Plaintiff Cloudpath Networks, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Cloudpath Networks, Inc., Petitioner, v. Racemi, Inc., Registrant.	Cancellation No. 92057344 **CLOUDPATH'S REPLY BRIEF** January 3, 2014

CLOUDPATH'S REPLY BRIEF

Petitioner, Cloudpath Networks, Inc. (hereinafter "Cloudpath"), herby replies to *Registrant's Response to Petitioner's Motion to Compel Discovery* (the "Response") filed December 20, 2013, by Registrant Racemi, Inc. (hereinafter "Racemi"). Registrant's own cited case law supports Cloudpath's contention that more than a reasonable time for production had elapsed as of the filing of the Motion to Compel, and hence the Motion should be granted. Also, Registrant's failure to present its Initial Disclosures until over one month after the required deadline, its continued refusal to communicate with Cloudpath, its failure produce an updated timeline for production, and its failure to produce even a single requested document over one month after the Motion to Compel was filed, further suggest the necessity for the Board to grant the Motion, including particularly the corresponding request for preclusive sanctions.

In its Response, Registrant relies on *L.H. v. Schwarzenegger*, 2008 WL 2073958, p. 5 (E.D. Cal. 2008) for the proposition that "Registrant is entitled to a reasonable period

of time" to produce its responsive documents (page 6 of the Response). Cloudpath agrees and suggests that *Schwarzenegger* is a compelling starting point for determining what reasonable time period should have been afforded to Registrant. In that case, a request for production of documents was served on February 15, 2008 and a motion to compel discovery was granted where the defendant had failed to produce *all* requested documents by April 18, 2008, two months after the request (which the court held was a "reasonable time" for production). The court ordered production of *all* documents by April 30, 2008, two and a half months after the request. One also notes that the *Schwarzenegger* class action lawsuit against the state of California, involved production of over one hundred thousand pages of documents. It is not hard to see that the scope of discovery in this case pales in comparison, and accordingly a reasonable time period for producing documents in this case should be substantially shorter than the two months deemed reasonable in *Schwarzenegger*.

Here, almost two and a half months elapsed between service of the First Request for Production (September 20, 2013) and filing of the Motion to Compel (December 3, 2013). As the burden of production in this case is magnitudes smaller than that in *Schwarzenneger*, and two months was considered a reasonable period for production in that case, Registrant has been given more than a reasonable period for production. Furthermore, in *Schwarzenneger* the motion to compel was granted even though the non-moving party had produced some documents within the two month window. Here, Registrant has yet to produce even a single document or give any updated indication as to when production will begin. Also, noticeably missing in Registrant's Response was the fact that their initial disclosures were more than a month late. These factors combined

with the continued lack of response on Registrant's pending discovery obligations, lead Cloudpath to submit that more than a reasonable period for production has been given and the Motion should be granted, including the corresponding request for preclusive sanctions.

Dated: January 3, 2014

By:

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Certificate of Service

I certify that on January 3, 2014, I had the foregoing documents served on Mr. Larry Jones, counsel for Racemi, Inc. via email, pursuant to an agreement between the parties to serve all such documents electronically.

/Stephen Gruber/
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